

REMARKS

The present Request for Continued Examination and amendment is in response to the Final Office Action dated January 6, 2009. Applicant respectfully requests reconsideration and allowance of the application. Claims 41-43, 45, 46, 48 and 55-58 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmidt, U.S. Patent No. 6,208,872 in view of Irvin, U.S. Patent No. 6,556,819. Claims 41 and 46 stand rejected 35 U.S.C. §103(a) as being unpatentable over Schmidt, U.S. Patent No. 6,208,872 in view of Agness, U.S. Patent No. 6,799,052. Applicant respectfully traverses these rejections for at least the following reasons.

The failure of an asserted combination to teach or suggest each and every feature of a claim remains fatal to an obviousness rejection under 35 U.S.C. §103, despite any recent revision to the Manual of Patent Examining Procedure (MPEP). Section 2143.03 of the MPEP requires the "consideration" of every claim feature in an obviousness determination. For a proper rejection, this "consideration" requires that the Examiner find that the references teach or suggest each and every claim feature. See *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974) (emphasis added) (to establish *prima facie* obviousness of a claimed invention, all the claim features must be taught or suggested by the prior art). As the Board of Patent Appeal and Interferences has recently confirmed, a proper obviousness determination requires that an Examiner make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." See *In re Wada and Murphy*, Appeal 2007-3733, *citing In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (Emphasis in original).

As amended, claim 41 recites a method comprising "determining whether a phone call placed to a user-inputted phone number will incur charge based on an evaluation of at least the current physical location of the wireless communication device, the list, and an area code of the user-inputted phone number." Applicant respectfully submits that no combination of Schmidt, Irvin and Agness teaches or suggests this feature. Irvin and Agness do not discuss cost

evaluation of any information. Although Schmidt mentions that a further object of the present invention is to minimize costs associated with employer owned mobile stations, Schmidt does not discuss determining whether a cost will be incurred based on an evaluation of area codes and a physical location of a wireless communication device determined by GPS.

Claim 46 recites a controller configured to "determine whether the attempted phone call will incur a charge based on an evaluation of at least the inputted area code, the current physical location, and the list comprising area codes stored in the memory". As discussed above, the references do not teach or suggest authorizing a call based on a cost evaluation of the physical location and a list of area codes.

Claims 42-43, 45, 48 and 55-58 depend from one of the independent claims 41 or 46 which applicant submits are allowable. Accordingly, these claims are allowable at least for the reason that they depend from an allowable base claim.

Further regarding claim 42, claim 42 recites that "the determining whether the phone call will incur a charge comprises determining if the phone call will incur a charge based on a relative position between the wireless communication device and a location of the area code of the phone number." Applicant respectfully submits that this feature is not taught or suggested by the cited references. The references do not discuss using a relative position between the device and the location of the area code of the phone number to determine if an additional charge will apply.

Conclusion

For the foregoing reasons, allowance of the pending claims in the present application is respectfully requested. If necessary, Applicant requests, under the provisions of 37 CFR 1.136(a), to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a). The Commissioner is authorized to charge any additional fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 50-3001 of Kyocera Wireless Corp (Attorney Docket No. UTL00013).

Respectfully submitted,

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